



Governing Body

344th Session, Geneva, March 2022

Institutional Section

INS

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Seventeenth item on the agenda

Reports of the Officers of the Governing Body

First report: Representation alleging non-observance by South Africa of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

1. By a communication dated 6 October 2021, the trade union Solidarity made a representation to the International Labour Office under article 24 of the ILO Constitution alleging non-observance by South Africa of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). A summary of the representation is contained in the appendix.
2. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation and informed the Government of South Africa accordingly.
3. Pursuant to article 2(1) of the Standing Orders, the Director-General brought the representation before the Officers of the Governing Body, who, according to paragraph 3 of the same article, shall report to the Governing Body on the receivability of the representation. Article 2(2) lays down the conditions for the receivability of a representation. In the light of these conditions, the following observations can be made in the present case:
 - (a) the representation was communicated to the International Labour Office in writing;
 - (b) it emanates from an industrial association of workers;
 - (c) it makes specific reference to article 24 of the ILO Constitution;
 - (d) it concerns a Member of the Organization;

- (e) it refers to Conventions to which the Member against which the representation is made is a party;¹
 - (f) it indicates in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Conventions.
4. Taking into account the above conditions, the Officers of the Governing Body consider that the representation is receivable in terms of article 2(2) of the Standing Orders. According to article 2(4) of the Standing Orders, the Governing Body, in reaching a decision on the receivability of the representation, on the basis of the report of its Officers, shall not enter into discussion of the substance of the representation. In accordance with article 3(1), if the Governing Body decides that the representation is admissible, it shall set up a tripartite committee to examine it, composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups.

► Draft decision

5. **In the light of the information contained in document GB.344/INS/17/1, and taking into consideration the recommendation of its Officers, the Governing Body decided that the representation was receivable and to set up a tripartite committee to examine it**

¹ South Africa ratified Convention No. 111 in March 1997.

► Appendix

Summary of the representation

By a communication dated 6 October 2021, the trade union Solidarity submits a representation against the Government of South Africa, denouncing workplace discrimination because of the overtly raced-based policies and legislation adopted by the State. In its opinion, this goes beyond the “protected measures” or affirmative action measures admissible under Convention No. 111 and results in unjustifiable preference being afforded to individuals due to their race and the maintenance of separate rights for separate race groups.

The trade union indicates that it is lodging the representation, firstly, on behalf of its members generally and, more specifically, those employed in the tourism sector; secondly, in its own interest; and thirdly, in the interest of all South Africans.

Solidarity affirms that it supports the need for nuanced special measures such as affirmative action because of the legacy of the system of apartheid but submits that these measures should comply with both the standard of rationality and applicable international standards, and remain within the parameters and spirit of the Constitution. It states that affirmative action should be aimed at correcting the position of the target group (remedial) and should be temporary in nature. It considers that the current affirmative action programme in South Africa falls foul of these two principles (Solidarity bases its arguments on the findings and conclusions of the South African Human Rights Commission (SAHRC) in its 2017/2018 Equality Report).

The trade union indicates that, with regard to the issues at stake, it submitted in May 2017 a petition to the SAHRC in relation to the State’s non-compliance with international conventions (still pending at the time of filing the representation).

Finally, Solidarity adds that, by an order dated 3 February 2021, the Constitutional Court dismissed its application to appeal as it did not bear reasonable prospects of success.